

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-209287.2

**DATE:** June 21, 1983

**MATTER OF:** Doug Lent, Inc.

**DIGEST:**

1. Post-bid opening cancellation of an IFB for an underground heat distribution system is reasonable where the IFB contained an unjustifiable requirement for metallic conduit and, as a result, one or more potential suppliers may have been prevented from competing.
2. Defective specifications which would unjustifiably impair competition among potential subcontractors may constitute a compelling reason to cancel a solicitation after bid opening.
3. Agency may not avoid canceling solicitation by changing the requirements after award where it is aware before award of the need for the change.

Doug Lent, Inc. protests the U.S. Army Corps of Engineers' cancellation of invitation for bids (IFB) No. DACA67-82-B-0008, a small business set-aside procurement for the replacement of underground heat distribution (UHD) lines at Fort Lewis, Washington. We deny the protest.

The solicitation was issued on August 28, 1982 with a scheduled bid opening date of September 22. Prior to bid opening, in response to an inquiry from a UHD system supplier (a potential subcontractor on the project), the Corps determined that it had failed to use the proper specification for the UHD system work. The Corps thus issued Amendment 0002, extending the bid opening date to September 29, and Amendment 0003, incorporating Federal Construction Guide Specification 15705 into the IFB. The IFB as amended included the following provision:

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"2.4 SYSTEM REQUIREMENTS: The system provided shall be a class 'A' metallic conduit system and shall be approved for class 'C' groundwater conditions, an operating temperature of 270 degrees F., and noncorrosive soil conditions."

On September 29, prior to the hour set for bid opening, another potential subcontractor, PittCon Preinsulated Pipes Corp., filed a protest in our Office alleging that Amendment 0003 was improper because it deviated from the Guide Specification. Specifically, PittCon alleged that portions of the added specifications, including the requirement for metallic pipe, were unjustified and thus unduly restrictive. The UHD system PittCon manufacturers had been approved under the applicable prequalification procedures for all the site conditions on this project, but is constructed with plastic rather than metallic conduit, and thus would not be acceptable under the protested requirements. PittCon believed it should be able to offer its approved system.

The contracting officer reportedly did not become aware of PittCon's protest in time to delay the bid opening and bids were opened as scheduled. Doug Lent was the low responsive bidder. Upon receiving details of PittCon's protest, the Corps reexamined Amendment 0003 and found that there was no supporting data justifying the metallic conduit requirement. As a result, the contracting officer concluded that, because the Corps' needs had been overstated, the IFB was unduly restrictive. Since the restriction had excluded at least one potential system supplier from competing, the contracting officer recommended that the IFB be canceled and that the requirement be resolicited without the restrictive provisions. The IFB was canceled on December 7.

Doug Lent basically contends that the defective specifications here did not constitute the compelling reason required under Defense Acquisition Regulation (DAR) § 2-404.1 to justify canceling an IFB after bids have been opened. It believes our decisions in 52 Comp. Gen. 285 (1972) and GAF Corporation; Minnesota Mining and Manufacturing Company, 53 Comp. Gen. 586 (1974), 74-1 CPD 68, holding that there was no compelling reason to cancel, are controlling here. We do not agree.

As the protester points out, DAR § 2-404.1 provides, and our Office has often stated, that a solicitation may be canceled after bid opening only when there exists a compelling reason to do so. See Deere & Co., B-206453.2, November 1, 1982, 82-2 CPD 392. A determination that a solicitation overstates the agency's needs and thus is unduly restrictive constitutes a compelling reason to cancel unless: (1) an award under the defective solicitation would serve the actual needs of the Government; and (2) such an award would not result in competitive prejudice. See Precision Piping Incorporated; M & S Mechanical Corporation, B-204024, B-204042.2, March 9, 1982, 82-1 CPD 215. Here, while it appears that an award to Doug Lent under the defective IFB would serve the Corps' needs, we believe the Corps reasonably determined, based on Pitt-Con's protest, that one or more potential suppliers were precluded from competing, and that an award therefore would result from competitive prejudice. Under these circumstances, the Corps had the requisite compelling reason to cancel the IFB after bid opening.

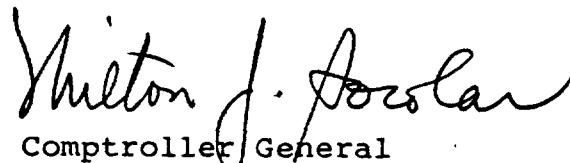
Doug Lent is correct that we found no compelling reason to cancel after bid opening in 52 Comp. Gen. 285, supra or GAF. In those cases, however, the agencies canceled procurements based solely on the existence of a defective specification, without also considering the other factors indicated above. In 52 Comp. Gen. 285, supra, for example, the agency canceled a typewriter solicitation after bid opening based solely on its determination that a requirement for variable key pressure was ambiguous. We held that the cancellation was improper because an award under the defective specification would serve the Government's actual needs, there was no apparent competitive prejudice. Our decision in GAF (where the agency canceled a solicitation due to an incorrect salient characteristic in a brand name or equal procurement) was based on identical considerations.

Here, while Doug Lent believes it is unlikely that the number of prime contractors bidding on the project under the solicitation will change on resolicitation, there is nothing in the record which persuades us that this is the case. It is at least clear, moreover, that PittCon would have been able to offer its equipment had the metallic conduit restriction not been included in the IFB, and there is every reason to believe that PittCon would in fact have participated as a subcontractor. Doug

Lent seems to be of the view that a restrictive IFB provision which affects competition principally among potential subcontractors should not be considered a compelling reason to cancel since it has no direct effect on bidding for the prime contract. It is well established, however, that potential subcontractors on a procurement have sufficient interest to challenge specifications as being unduly restrictive. See Incorporated Door Systems Co., B-208407, August 19, 1982, 82-2 CPD 159; Abbott Power Corporation, B-186568, December 21, 1976, 76-2 CPD 509. Potential subcontractors are part of the competitive process, and defective specifications which would unjustifiably impair competition at that level, in our opinion, may indeed constitute a compelling reason to cancel an IFB. See PhilCon Corp., B-206641, B-206728, B-207421, April 12, 1983, 83-1 CPD 380.

Doug Lent submits that there were other more appropriate remedies here which would have protected PittCon's interests while also avoiding the auction atmosphere attending cancellation and resolicitation. Specifically, it believes that the metallic conduit requirement should have been waived after bid opening or made the subject of a change after award. We do not agree. The integrity of the competitive bidding system requires that the agency not award a contract competed for under one set of requirements with the intention of changing those requirements after award. D-K Associates, Inc., B-206196, January 18, 1983, 62 Comp. Gen. \_\_\_, 83-1 CPD 55.

The protest is denied.

for   
Comptroller General  
of the United States